



RECEIVED TOWN CLERK
NEEDHAM, MA 02492

2020 JUN -5 AM 10: 29

**TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS**

SPECIAL PERMIT

***J. Derenzo Properties, LLC, applicant
123 Pickering Street
Map 53, Parcel 17***

(Filed during the Municipal Relief Legislation, Chapter 53 of the Acts 2020)

February 13, 2020

J. Derenzo Properties, LLC, applicant, made application to the Board of Appeals for a Special Permit under Sections 1.4.7.4, 3.2, 7.5.2 and any other applicable Sections of the By-Law to permit the demolition, extension, alteration, enlargement and reconstruction of the lawful, pre-existing, non-conforming two-family dwelling to be replaced by a new two-family structure. The property is located at **123 Pickering Street**, Needham, MA in the Single Residential B District. A public hearing was held in the Select Board Chambers, Needham Town Hall, 1471 Highland Avenue, Needham, MA, on Thursday, February 13, 2020 at 7:45 p.m.

Documents of Record:

- Application for Hearing, Clerk stamped January 24, 2020.
- Plan of Land prepared by Field Resources, Inc., stamped by professional land surveyor Bradley Simonelli; dated January 24, 2020.
- Memorandum in Support of Special Permit prepared by Giangrasso Law LLC.
- Existing Conditions Plan prepared by Field Resources, Inc., stamped by professional land surveyor Bradley Simonelli; dated December 23, 2019.
- Architectural Plans A1.1, A2.1, A2.2, Z1.1, prepared by Design Inc. Architects, dated January 24, 2020.
- Letter from William and Jeanne Rayner dated January 23, 2020.
- Real Property Record Card.
- Residential Property Record Card.
- Poll Tax List 1925.
- Email from Dennis Condon, Chief of Fire Department, January 28, 2020.
- Email from Tara Gurge, Assistant Public Health Director, February 4, 2020.
- Email from Lt. Belinda Carroll, Needham Police Department, January 29, 2020.
- Letter from David A. Roche, Building Commissioner, February 3, 2020.
- Letter from Lee Newman, Director of Planning and Community Development, February 5, 2020.

- Letter from Thomas A. Ryder, Assistant Town Engineer, February 5, 2020.
- Memo from Patrice and Gerry Clifford, 117 Pickering Street, February 13, 2020.

Documents Received Prior to March 30, 2020:

- *Garage Plans and Elevations, A1.3, HPA Design, Inc., dated January 24, 2020.*
- *Letter from George Giunta, Jr., March 26, 2020.*

Documents Received Prior to April 30, 2020:

- Memorandum of Support, Exhibit A-G, prepared by George Giunta, Jr., April 24, 2020.
- Affidavit of Anthony E. Cefalo, April 29, 2020
- Letter from Joe and Lauren O'Neil, April 15, 2020.
- Letter from Lee Newman, Director of Planning and Community Development, April 22, 2020

Documents Received After April 30, 2020

- Plan of Land prepared by Field Resources, Inc., stamped by professional land surveyor Bradley Simonelli; dated January 24, 2020 and Revised May 28, 2020.

February 13, 2020

The Board included Jonathan D. Tamkin, Vice-Chairman; Howard S. Goldman, Member; and Kathy Lind Berardi, Associate Member. Also participating was Peter Friedenberg, Associate Member. Mr. Tamkin opened the hearing at 7:45 p.m. by reading the public notice.

David A. Giangrasso appeared representing the applicant.

Mr. Giangrasso referred to:

- 1925 Poll Tax data that indicated William and Esther Price owned the house and leased to others: George, Lillian and Sterling Holt; and Thomas and Margaret Kiley;
- a property assessment card which indicated that the property was assessed as a two-family as of 1942; and
- a current Residential Record Card that identified the property as a two-family property.

Mr. Giangrasso reported that there building permit records from the 1990's indicating there were two-kitchens.

Mr. Goldman and Ms. Berardi expressed concern that the historic information did not demonstrate that the property has been continuously used as a two-family. Mr. Tamkin noted that the applicant is responsible for providing evidence that the two-family use has not been abandoned for a period greater than two years. Mr. Friedenberg stated that street list and voting records are available to back up the chronology of use. He was concerned about the 20-year gap in the historic information provided. The Board suggested that affidavits and testimony of neighbors who know the history of the property could demonstrate the continuous use as a two-family.

Patrice Clifford, 117 Pickering Street, stated that lives next-door to the property and had researched the Poll Tax records from 1913 to 2013. She noted that from 1930-1944 William and Esther Price were the sole occupants of the property. In 1947-1949, owners Armstrong and Margaret Beattie and their son were the sole occupants of the property.

Mr. Giangrasso argued that the Assessors records showed that during the period of 1947-1949, the property was assessed as a two-family even though the Poll Tax records indicated one family occupied the property. Mr. Tamkin stated that how the property is assessed is not the only indicator of property use. In fact, the actual use of a property for zoning purposes often differs from assessing records.

Mr. Tamkin offered to allow the applicant to complete their presentation, but proposed to continue the public hearing to allow them to gather more historic evidence on the continuous use of the property.

Comments received:

- The Fire Department had no concerns.
- The Health Department requires that the applicant complete and submit a *Notification of Demolition* form.
- The Police Department has no issues.
- The Building Commissioner has found the application meet all the requirements under 1.4.7.4 of the Zoning By-Law for a lawful, pre-existing non-conforming two-family dwelling in the SRB District.
- The Planning Board made no comment.
- The Engineering Department found that the proposed new structure requires a minimum combined volumetric capacity of 1 inch over the entire impervious area of the property to be recharged. The plans should be revised, prior to receiving a building permit, to collect roof run off from the entire structure based on the impervious area of the entire site for a minimum of one inch into drywells at one or more corners of the structure. As this is a new structure, an Engineer certifying that the stormwater control measures will mitigate the 2, 10, and 100-year will be required through the building permit review process.
- Patrice and Gary Clifford, 117 Pickering Street, raised concerns about size, increase in noise and activity, landscaping and fencing and post construction clean up.

Joe O'Neill, 127 Pickering Street, stated that he has lived next door since 1970. He affirmed that for the past fifty years the two-family house has been occupied continuously by two different tenants.

Mr. Giangrasso continued with his presentation. He said that the proposed new two-family structure is in keeping with the size and scale of neighboring properties. He referred to the plans submitted with the application.

The new house will have a 20'x 24' two-car garage. Mr. Friedenberg inquired about the height of the garage. Mr. Derenzo replied that it would be under 20', around 18'. Mr. Friedenberg noted that a garage cannot exceed 15' when five feet from the sideline. The applicant will need to modify the height or move the garage farther from the sideline.

The driveway will be used primarily for parking. The new garage will be to the rear of the house and relocated to north of the property (on the opposite side of the current garage) with the garage doors facing south. The backyard will be an area in common. Mr. Giangrasso stated there will be less paving with the new project.

Each unit will be 3,373 square feet and will be set up as condominiums.

The meeting was opened to the public.

Ms. Clifford said she was in support of the project, but had concerns. The new house was significantly larger than the current structure. The existing two-family has 2,227 square feet that will increase to 3,372 square feet. She is concerned about additional activity and noise. For the past 28 years, there have only been two cars on the property. She expects that the new luxury condominiums will attract four cars, two per unit, that are parked inches from the shared lot line. Ms. Clifford questioned the amount of paving described as being less than there is currently since the proposed driveway is longer than the current driveway. She was concerned about losing the peace and tranquility they have enjoyed over the decades. She'd like to see a tall fence between the properties to mitigate the disturbance. She thought the design was nice and an improvement over the current structure.

Mr. Goldman inquired about the type of buffer she would like to see. Ms. Clifford wanted tall green plantings from the sidewalk for a distance of 30 feet, then a six to seven-foot-tall solid fence along the length of the properties.

Ms. Clifford also requested that dust protection be provided during construction and that the applicant clean her windows upon completion of construction.

Mr. O'Neil was in support of the project and had the same concerns raised by Ms. Clifford.

Both abutters indicated that they had met with the applicant prior to the hearing and raised these concerns.

John Cosgrove, Jr., 68 Oakland Avenue, has been a neighbor since he was born in 1953. As long as he can remember, the property has been a two-family. He was supportive of the project especially if the applicant took care of the issues raised by the Cliffords and O'Neils.

The applicant was agreeable to address the concerns raised by the abutters.

Mr. Friedenberg was concerned that the 12' wide driveway was not wide enough to allow parking and have cars pass by to reach the garage.

Mr. Goldman moved to continue the meeting to March 30, 2020 at 7:45pm to allow the applicant to address:

- the historic evidence that the property has been continually used as a 2-family from 1926 through 1958;
- the proposed boundary fencing and barrier between properties; and
- construction debris mitigation efforts.

Ms. Berardi seconded the motion. The motion was unanimously approved.

The meeting adjourned at 9:00 p.m.

March 30, 2020

The Board held this meeting virtually as allowed under "Order Suspending Certain Provisions

of the Open Meeting Law G.L. c. 30A, S20". No in-person meeting took place at the Public Services Administration Building in the Charles River Room, Needham, MA as had been announced in the previous meeting. Notice of the virtual meeting was posted on the Town website and the Board's website. Electronic notice of the virtual meeting was provided to the applicant and all parties who had appeared at the February 13, 2020 hearing or submitted written comments.

The Board included Jon D. Schneider, Chair; Jonathan D. Tamkin, Vice-Chair; and Howard S. Goldman, Member. Also participating was Kathy Lind Berardi, Associate Member and Peter Friedenberg, Associate Member. Mr. Schneider opened the hearing at 8:05 p.m. by reading the public notice.

Mr. Schneider reported that the applicant was unable to research source materials because of public buildings closures due to the Covid19 pandemic and requested a continuance. Mr. Goldman moved to continue the meeting to April 30, 2020 at 7:30pm. Mr. Tamkin seconded the motion. The motion was unanimously approved.

April 30, 2020

The meeting was held virtually on Zoom. Notice of the virtual meeting was posted on the Town's and Board's website. Electronic notice of the virtual meeting was provided to the applicant and to all parties who had appeared at the February 13, 2020 hearing or submitted written comments.

The Board included Jon D. Schneider, Chair; Jonathan D. Tamkin, Vice-Chair; and Howard S. Goldman, Member. Also participating was Kathy Lind Berardi, Associate Member and Peter Friedenberg, Associate Member. Mr. Schneider opened the hearing at 7:30 p.m. by reading the public notice.

Mr. Schneider requested that Ms. Berardi vote on the matter in his place since she had heard the evidence at the prior hearing. George Giunta, Jr. attorney for the applicant, conducted research of the U.S. Census and Poll Tax records for the 1930's and 1940's, which indicated that William and Esther Price were the owners of record and the only residents. In that period, the property was addressed as 26 Pickering Street.

The 1942 Assessors Card identifies the property as a multiple unit and is described as a two-family unit. Furthermore, the exterior of the Assessing File Jacket states "*1948-permit issued to Mr. Armstong Beatti to make it into a 2-family.*" Mr. Giunta submitted a 1948 building permit along with a plot plan demonstrating the conversion of a single-family to the two-family with a single car garage.

Mr. Giunta reported that Section 17(a) of the 1947 Zoning By-Law allowed the Board of Selectmen to permit the conversion of a single-family house to a two-family. This provision was in place in the 1952 By-Law as well. Because of the closure of Town Hall, Mr. Giunta was unable to confirm that the Select Board approved the conversion, but argued that a building permit would not have been issued if there were no approval. Mr. Giunta concluded that the conversion of 123 Pickering was allowed under the 1947 By-Law.

Mr. Giunta provided an affidavit from Mr. Anthony Cefalo, a Needham native, born in 1927

and life-time resident, who attested, that as a member of the Saint Joseph Church involved in paper drives of the area during the 1940s, the property was a two-family.

Mr. Giunta further argued that the two-family use and structure had been in existence for more than ten years and would be deemed a legal non-conforming use and structure under MGL 40A, Section 7.

Mr. Schneider complimented Mr. Giunta for his thorough research and discovery of the 1948 and 1952 By-Law allowing the conversion of single-family structures to two-family structures.

Mr. Friedenberg questioned whether MGL ch. 40A, Section 7 applied to a use since the wording says the "structure." Mr. Giunta argued that the two-family use is so tied to a two-family structure that it would make no sense to make the structure legal without making the use legal. In any event, this is a secondary argument and the main reliance is on the special permit allowing conversion.

The Board agreed Mr. Giunta presented sufficient evidence that the property has been continually used as a two-family structure.

Mr. Giunta reported that the garage will not exceed 15 feet in height. The applicant proposed to move the garage closer to the house than what was shown on the original plan and approximately 13 feet away from the neighbor's maple tree. It would be 10 feet or more away from the house.

The meeting was open to public comment.

Patrice and Gerry Clifford, 117 Pickering Street, were satisfied with the proposal.

Lauren and Joe O'Neil, 127 Pickering Street, did not support the garage being moved closer to the house and to their home. The proposed location may damage a pine tree on their property, and they did not want to look at the garage. They had submitted a letter requesting that the garage be moved towards the back of the property so it wouldn't affect the maple and evergreen tree on their property. They had discussed the garage location with Mr. Derenzo and thought he had agreed to move it to the rear.

Mr. Derenzo responded that moving the garage 35 feet from the house would eliminate the backyard and make it more difficult for cars to reach the garage in the winter. Moving the garage closer to the house would protect the existing maple tree. The proposed garage will be on slab foundation which will be less detrimental to the trees' root system than a full basement foundation. The plans include the installation of a fence. The O'Neils supported the installation of the fence.

Mr. Friedenberg wondered if the garage could be moved to the other side of the lot closer to 117 Pickering Street.

Ms. Clifford said they'd need to see the plans prior to making any comments, but were not supportive of a garage and turnaround along the border of their property. They were supportive of the original proposal.

There were discussions of alternative garage locations. Mr. Derenzo said that he would do whatever the Board wanted. Mr. Schneider said that the applicant needs to make a specific proposal to be put to a vote. However, he would continue the hearing if Mr. Derenzo wanted to have further discussion with the neighbors.

The applicant concluded that he wanted to place the garage closer to the house and away from the neighbors' trees as proposed at the beginning of the hearing.

Mr. Tamkin moved to grant a Special Permit to allow the demolition, extension, alteration, enlargement and reconstruction of the lawful, pre-existing, non-conforming two-family dwelling located at 123 Pickering Street to be replaced by a new two-family structure as depicted in the submitted plans as amended with the following conditions:

1. Plant tall green plantings along the south property boundary for a distance of 30 feet from the sidewalk;
2. Install a six- to seven-foot-tall solid fence along the remainder of the south boundary and along the north boundary;
3. Provide dust protection during the construction to prevent construction dust and debris from going onto the adjacent properties;
4. Clean the windows at 117 Pickering Street post construction; and
5. Approval by the Town Engineering Department of the Storm Water Mitigation Plan.

Mr. Goldman seconded the motion. The motion was unanimously approved.

Findings:

On the basis of the evidence presented at the hearing, the Board makes the following findings:

1. The applicant, J. Derenzo Properties, LLC, brought the application as the prospective purchaser of the property located at 123 Pickering Street, in the single Residence B District.
2. The property consists of approximately 11,061 square feet of land and currently includes a two-family house. The applicant plans to demolish the current two-family structure and reconstruct a new two-family structure.
3. The existing two-family house is a non-conforming use and is not allowed by current zoning requirements. The applicant therefore, is seeking a Special Permit allowing the demolition and reconstruction of the current two-family structure.
4. Pursuant to Section 1.4.7.4 of the By-Law, a lawful pre-existing non-conforming two-family dwelling may be reconstructed with a footprint greater in area than that of the original non-conforming building by Special Permit if such reconstructed and enlarged building is appropriate in scale and mass for the neighborhood, with particular consideration of abutting properties, and if it is not substantially more detrimental to the neighborhood than the existing non-conforming building.
5. The applicants stated that the current two-family structure was built in 1884, prior to the adoption of zoning in the Town of Needham. The Assessor's Department Field Card describes the property as a two-family and describes the use category as "multiple" on the front. The outside jacket has a notation indicating that in 1948, a

permit was issued allowing the conversion of the structure from a one-family to a two-family. The applicant submitted the Building Permit from 1948 allowing the conversion from a one-family structure to a two-family structure. The applicant also submitted relevant portions of the 1947 and 1952 Zoning By-Laws, which demonstrating that the Board of Selectmen at that time could permit the alteration of a one-family house to a two-family house. The Poll Tax/Street List records following those years confirmed that the two-family use was consistent from the date of the conversion.

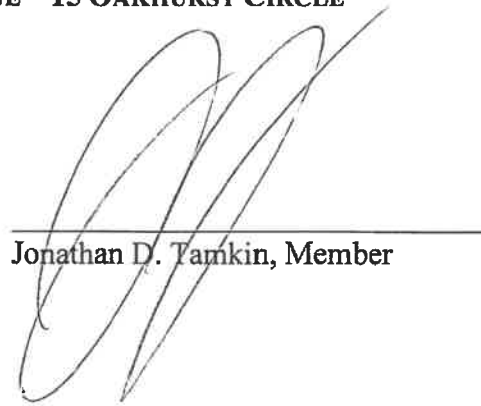
6. The applicant confirmed that the new two-family structure will meet all applicable dimensional and density requirements and will be consistent with or below the applicable maximum lot coverage requirements.
7. Based on the evidence submitted to the Board during the hearing, the Board finds that the existing structure is a lawful pre-existing non-conforming structure and that the proposed reconstruction and enlargement of the two-family structure is appropriate in scale and mass for the neighborhood and will not result in a structure that is substantially more detrimental to the neighborhood than the existing non-conforming structure.

Decision:

On the basis of the foregoing findings, following due and open deliberation, upon motion duly made and seconded, the Board by unanimous vote, grants the applicant a Special Permit under Section 1.4.7.4 of the Zoning By-Law allowing the demolition and reconstruction of the lawful, pre-existing non-conforming two-family dwelling located at 123 Pickering Street, as shown on the submitted revised plans and with the conditions that the applicant must:

1. Plant tall green plantings along the south property boundary for a distance of 30 feet from the sidewalk;
2. Install a six- to seven-foot-tall solid fence along the remainder of the south property boundary and along the north boundary;
3. Provide dust protection during the construction to prevent construction dust and debris from going onto the adjacent properties;
4. Clean the windows at 117 Pickering Street post construction; and
5. Receive approval by the Town Engineering Department of the Storm Water Mitigation Plan.

SIGNATORY PAGE – 15 OAKHURST CIRCLE



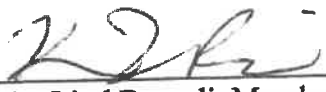
Jonathan D. Tamkin, Member

SIGNATORY PAGE – 123 PICKERING STREET



Howard S. Goldman, Member

SIGNATORY PAGE – 123 PICKERING STREET


Kathy Lind Berardi, Member

